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**INVESTIGATIVE REPORT  
PA00-0002**

**CHARGING PARTY:** Shirley Scribner  
**RESPONDENTS:** University of Vermont  
**CHARGE:** Public Accommodations/Disability

**SUMMARY OF CHARGE:** Shirley Scribner alleges that the University of Vermont ("UVM") discriminated against her because of her disability when six professors expressed reluctance or refused to provide her with the reasonable accommodations she requested for their classes. In addition, Ms. Scribner alleges that the Office of Specialized Student Services failed to ensure that she received accommodations in a timely manner.

**SUMMARY OF RESPONSE:** The University of Vermont denies that it failed to provide reasonable accommodations to Ms. Scribner in a timely manner.

**PRELIMINARY RECOMMENDATION:** This investigative report recommends that the Human Rights Commission find that there are reasonable grounds to believe that UVM discriminated against Shirley Scribner because of her disability, in violation of 9 V.S.A. §4502 (c)(1) and (5).

**SUMMARY OF INVESTIGATION:**

**Interviews:**

Jeff Buzas, 9/19/00  
William Cats-Baril, 9/19/00  
Brian Cooke, 8/31/00  
Ralph D'Amico, 3/28/01, 4/16/01  
Mel Donovan, 5/17/01  
Shirley Gedeon, 9/21/00  
Deborah Guy, 1/31/01, 2/12/01  
Sharon Hack, 4/17/01, 5/16/01  
David Harrison, 9/19/00  
James Kraushaar, 10/12/00, 4/17/01  
Anthony Kvedar, 9/19/00  
Shirley Scribner (Cooke), 8/31/00, 12/4/00, 12/6/00, 1/25/01, 4/10/01, 4/18/01  
Lori Van Allen, 9/21/00, 10/12/00, 2/7/01  
Marti Woodman, 10/12/00, 4/17/01

**Documents:**

Charge of Discrimination, 8/24/99 [Charge]

Response to request for information [CP-1]

Response to Charge of Discrimination, 9/28/99 [Response]

Response to request for information, 10/21/99 [RP-1]

UVM Policies and Procedures for Students with Disabilities [RP-2]

Ms. Scribner's file from the Office of Specialized Student Services [RP-3]

Ms. Scribner's file from the School of Business Administration [RP-4]

E-mail messages between Ms. Scribner and Professor Kraushaar [RP-5]

Complaint filed by Ms. Scribner with the UVM Office of Affirmative Action and Equal Opportunity and related documents [RP-6]

Response to request for additional information, 7/18/00 [RP-7]

Report of internal investigation of Ms. Scribner's complaint filed with the Office of Affirmative Action and Equal Opportunity, 10/26/99 [RP-8]

**I. Facts*****A. Background***

1. **Shirley Scribner** has a language-based learning disability that affects her oral language, short-term auditory memory and auditory processing. [Scribner, CP-1] She was a student in the Management Information Systems ("MIS") program of the School of Business Administration ("SBA") at the University of Vermont ("UVM") from September 1997 until May 2000. For the classes she took at UVM, Ms. Scribner requested and received some or all of the following academic accommodations for her disability: note-taker support; extra time on quizzes, exams, and in-class writing assignments; exam/assignment rescheduling when more than one test/assignment was scheduled on a given day; use of a computer for essay exams; reading assistance for exams; occasional extra time to complete writing and other homework assignments.<sup>1</sup> [Scribner, Van Allen, RP-4]

2. UVM does not dispute the fact that Ms. Scribner was a qualified student with a disability and required academic accommodations. UVM also does not dispute the fact that prior

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<sup>1</sup> The number of accommodations provided to Ms. Scribner varied slightly from class to class, depending on the nature of the class and its requirements.

to her enrollment at UVM, Ms. Scribner provided adequate documentation of her disability and requested academic accommodations. [Response]

3. During the time that Ms. Scribner was a student at UVM, **Lori Van Allen** was a Learning Disabilities Specialist at UVM's Office of Specialized Student Services ("OSSS").<sup>2</sup> Ms. Van Allen's responsibilities included assisting students with the arrangement of accommodations for classes, assisting students with problems in the accommodations process, advising students who are not achieving at a level they are satisfied with, and referring students to appropriate resources for individual needs.<sup>3</sup> Ms. Van Allen saw some students once a semester and others more often, depending on their needs. She served as an academic advisor (in addition to a student's faculty advisor) by assisting students with the selection of courses. She also served as a consultant and educator to the faculty, answering questions and providing information about the needs of students with disabilities, how to provide accommodations, why accommodations are necessary, and what to do if a faculty member suspects that a student had a disability and needs an accommodation. She worked at UVM for 9 years and worked with Ms. Scribner throughout Ms. Scribner's tenure there. Ms. Van Allen no longer work for UVM. [Van Allen]

4. **Marti Woodman** is the Assistant Dean, Director of Student Affairs, and Lecturer for the School of Business Administration. [Woodman]

5. **Jeff Buzas** is an Associate Professor of Statistics at UVM. [Buzas]

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<sup>2</sup> The OSSS is one of three different "Certifying Offices" whose responsibilities are divided according to the kinds of disabilities they assess. The OSSS serves students with learning disabilities, traumatic brain injury, speech and language impairments, ADHD, and some physical disabilities; the other two certifying offices work with students with medical and psychiatric disabilities.

<sup>3</sup> This might include evaluation and diagnosis referrals, auxiliary services and aids, scribe services, reader services, tutoring services, etc.

6. **William Cats-Baril** is an Associate Professor of Information and Decision Sciences.  
[Cats-Baril]

7. **Shirley Gedeon** is an Associate Professor of Economics. She also serves as the Co-Director of the Center for Teaching and Learning, is a Presidential Fellow, and is a member of the Faculty Senate Ad Hoc Committee for Academic Accommodations (for students with disabilities). [Gedeon]

8. **David Harrison** is an Assistant Professor of Finance at UVM. [Harrison]

9. **James Kraushaar** is an Associate Professor specializing in Management Information Systems. He became Ms. Scribner's academic advisor in the fall of 1998. [Kraushaar]

10. **Anthony Kvedar** is an adjunct faculty member who teaches one course per year on managerial accounting. [Kvedar]

11. **Ron Thompson** was Ms. Scribner's academic advisor during the 1997-98 academic year. He taught in the School of Business Administration at UVM from 1988 to 2000.  
[Thompson]

12. **Bryan Cooke** was Ms. Scribner's boyfriend when she was enrolled at UVM. They are now married. [Cooke]

13. **Ralph D'Amico** is a Team Leader and Section 504 post-secondary education specialist for the Department of Education Office of Civil Rights ("OCR") in Boston. [D'Amico]

14. **Deborah Guy** is the Director of Special Services and **Sharon Hack** is the secretary in the Special Services Office at Adirondack Community College ("ACC"). [Guy, Hack]

15. **Mel Donovan** is the State ADA Coordinator for the Community College of Vermont ("CCV"). [Donovan]

## **B. UVM Policies and procedures**

16. According to UVM "Policies and Procedures for Students with Disabilities"

("Policies"):

"The University is responsible for making efforts to overcome the architectural, program, and attitudinal barriers that prevent students with disabilities from deriving full benefit from the University experience. It is, therefore, the policy of the University of Vermont not to discriminate against qualified disabled students, and thus to provide reasonable academic accommodations and auxiliary services to such students with due regard for the integrity of academic programs." [RP-2]

17. The Policies then outline:

- a list of Certifying Offices on campus and their programs,
- how the University determines student eligibility for various services,
- the responsibilities of the parties (Certifying Offices, the student, the faculty, and the institution) once eligibility is established,
- a list of services available,
- a description of different types of academic accommodations,
- procedures for ensuring appropriate academic accommodations, and
- a protocol for dispute resolution. [RP-2]

18. According to the policies, the responsibilities of the main parties involved in the process of ensuring the provision of adequate academic accommodations include:

### **A. The Certifying Office**

.... It is the responsibility of the staff of the Certifying Office to certify student disabilities and to recommend reasonable and appropriate accommodations in light of the nature of a student's disability and academic program requirements. The staff of the Certifying Office is responsible for .... recommending reasonable accommodations, and advising the student with respect to appropriate compensating strategies.

The Certifying Office will serve as a liaison between, and resource to, the student and faculty. Once both the student and the faculty have agreed upon accommodations, the Certifying Office will continue to serve as a resource for the facilitation and/or modification of those accommodations.

### **B. The Student**

It is the responsibility of all students seeking disability accommodations to self-identify by contacting the appropriate Certifying Office and supplying adequate and comprehensive documentation of the disability. Students are

strongly encouraged to self-identify as early as possible. Accommodations cannot be made retroactively.

A student who receives disability certification must work cooperatively with the staff of the Certifying Office and faculty to determine reasonable and appropriate academic accommodations. With student permission, the faculty will be presented with written notification of the disability in the form of a Confidential Notification of Accommodations. The Notification<sup>4</sup> will contain a description of the accommodations recommended by the staff of the Certifying Office based upon course requirements and the strengths and weaknesses identified in the disability documentation. If all parties agree to the recommended accommodations, the agreed to accommodations are to be implemented as soon as possible, but in no case more than five academic days after the Notification has been received by the faculty. If the student does not grant permission for a faculty member(s) to receive a Notification, the student will receive no classroom accommodations in the course(s) (meaning those accommodations which would have been provided and/or arranged by the faculty member). If a student gives his/her permission to provide the faculty member(s) with Notification at a later date, such classroom accommodations will be provided in accordance with the procedure; however, in no event will the student receive retroactive accommodations, meaning that, among other things, grades and academic assessments received when no accommodations were required to be provided will not be changed.

Each semester students are responsible for: (1) meeting with staff of the certifying office to request accommodations and develop the Notification of Accommodation form; (2) initially contacting the faculty to discuss the accommodations requested; (3) keeping appointments with faculty and certifying office [sic] staff to avoid delays in implementation; and (4) conferring with faculty regularly regarding accommodations. Students are encouraged to request accommodations as early as possible in the semester; if requests for accommodation are not made at least five academic days prior to the date when needed, the provision of that accommodation cannot be guaranteed.

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### **C. The Faculty**

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Faculty may not dispute the fact, nature, and/or extent of a disability which has been certified by a Certifying Office. Faculty do, however, have the right to ask Certifying Office staff for clarification of recommended

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<sup>4</sup> The format of this notification letter changed during the three years that Ms. Scribner was enrolled at UVM. While the initial format gave only general descriptions of the recommended accommodations, the revised format provided more specific information about each accommodation, such as the amount of extra time allowed for quizzes and exams. Ms. Van Allen explained that these changes occurred as a result of an increase in the number of students needing accommodations and the need to streamline the process for determining accommodations. [Van Allen].

accommodations and to suggest alternative accommodations perceived to be more appropriate in light of the nature of the course or program. Alternative accommodations must be as appropriate and effective as those recommended. Alternative accommodations may not be implemented until they are approved by the Certifying Office. Faculty who are dissatisfied with the accommodations recommended, following consultation with the Certifying Office, may invoke the Protocol for Dispute Resolution . . . . However, the Faculty do not have the right to decline to review recommended accommodations or to be unavailable for consultation with the Certifying Office.

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If the recommended accommodations are agreed upon, faculty are to implement the accommodations as soon as possible, but in no case more than five academic days after the Notification has been received . . . . Delays in the negotiations or the implementation of accommodations can be construed as a form of discrimination. [RP-2]

### *C. The Office of Specialized Student Services*

19. As mentioned above, the OSSS is the Certifying Office that works with students with learning disabilities, traumatic brain injury, speech and language impairments, ADHD, and certain physical disabilities. The OSSS provides such services as "securing access to University programs and activities, providing assistant services and auxiliary aids related to the academic program, and facilitating the provision of counseling (academic and personal)." [RP-2]

20. Generally, Ms. Van Allen met with approximately 60-65 students during the first 3-4 weeks of a semester and approximately another 30 students throughout the remainder of the semester (those who waited until later to set up accommodations, tried their classes without the accommodations, or who had not been previously diagnosed with a learning disability). Ms. Van Allen discussed course requirements with students and the impact of students' disabilities upon their ability to meet course requirements. In Ms. Scribner's case, Ms. Van Allen stated that meetings at the beginning of the semester usually took about 20 minutes because Ms. Scribner

needed a number of accommodations in all her classes, the combination of which varied from class to class. [Van Allen]

21. According to current policies and procedures, students with learning disabilities are expected to go to the first day of their classes to obtain information about course requirements before meeting with Ms. Van Allen to discuss their accommodations.<sup>5</sup> Ms. Van Allen explained that students with learning disabilities have accommodation needs that are context specific and cannot be sorted out until a student attends class and obtains information about course requirements unless a student meets with his/her instructors before the beginning of the semester to discuss the course requirements. [Scribner, Van Allen]

22. The outcome of the meeting with Ms. Van Allen is a series of notification letters from the OSSS to student's professors giving a list of recommended accommodations for each class. Ms. Van Allen said that the time period between her meeting with a student and the date his/her professors receive the notification letter depends in part on when the student delivers the letter. She also said that delays in setting up appointments with the OSSS can affect the time it takes to deliver a letter; in those cases, the OSSS can call professors to inform them of a student's disability and accommodation needs. Ms. Van Allen gives the notification letters to the student who is responsible for delivering the letters to, and discussing them with his/her professors.<sup>6</sup> Ms. Van Allen said that one of the reasons for having the students deliver the letters is to help guarantee discussion between students and teachers about arrangements for providing the accommodations. [Van Allen]

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<sup>5</sup> The general exception to this process is for students with visual or other physical disabilities. The notification letters for these students are sent out to professors before the beginning of each semester. Ms. Van Allen stated that this was possible because students with physical disabilities have fixed accommodation needs that are not affected by the requirements of a course. [Van Allen]

<sup>6</sup> During Ms. Scribner's first year at UVM, the letters were sent via campus mail. However, Ms. Van Allen said that campus mail could be very slow, causing undue delays in the delivery of the notification letters. The OSSS subsequently changed its delivery procedure to hand-delivery by the students. [Scribner, Van Allen]



23. Once the letters are delivered, it is the responsibility of both the student and the professors to determine how best to provide the accommodations. For example, a professor may choose to accommodate a student's need for a separate testing location by allowing the student to take the exam in another classroom or at the Living/Learning Center.<sup>7</sup> [Van Allen] The student is also expected to "discuss the specifics of each accommodation (when, where, and how the accommodation will be provided) with the instructor at least one week before scheduled exams and/or assignments. If [the student] fails to make these arrangements at least one week in advance, accommodations will be provided at the instructor's discretion." [RP-2]

24. If faculty members have questions about the accommodations or wish to discuss alternative accommodations, they are expected to contact the OSSS within a week of receiving the notification letter. Professors have the right to suggest alternative accommodations but Ms. Van Allen stated that she always advised students to speak with her before agreeing to the proposed alternatives. [Van Allen]

25. Ms. Van Allen did not remember hearing complaints about the process for obtaining and providing accommodations during the 9 years that she worked at UVM. According to Ms. Van Allen, if a student needs an accommodation before obtaining a notification letter from the OSSS – for example, when a student has a quiz during the first week of class before he/she has had an opportunity to meet with Ms. Van Allen – the student is supposed to tell the professor that he/she needs an accommodation, that the professor would be getting a notification letter from the OSSS, and that the professor could call the OSSS for verification of the student's accommodation need. Ms. Van Allen stated that the OSSS will call a professor if the professor is hesitant to give the accommodations requested by the student prior to receiving the notification

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<sup>7</sup> The Living/Learning Center is housed at the OSSS and also serves, in part, as a proctoring center for students in need of a separate testing location.

letter. In the majority of cases, faculty members provide accommodations requested by a student prior to receipt of the notification letter. [Van Allen]

***D. Ms. Scribner's experience with the OSSS***

26. Ms. Scribner first contacted Ms. Van Allen in the spring of 1997, before she enrolled at UVM, to discuss the kinds of accommodations the university would provide. Ms. Scribner provided the necessary documentation of her disability to the OSSS and she and Ms. Van Allen discussed her learning disability and the kinds of accommodations that she had received in the past. Ms. Scribner told Ms. Van Allen that she usually needed assistance with note-taking, extra time on tests and clarification of instructions or questions on quizzes, exams and projects. According to Ms. Van Allen, the OSSS determined that Ms. Scribner needed twice the amount of time for exams but that she did not need unlimited time for exams. Ms. Van Allen told Ms. Scribner that she would receive all the accommodations she requested. Ms. Scribner stated that the OSSS did not deny any of her requests for accommodations. [Scribner, Van Allen]

27. In January 1999, Ms. Scribner asked the OSSS for an accommodation that would allow her to take tests in a separate location such as a different classroom or the proctoring center. Ms. Scribner said that she asked for this accommodation because of her test anxiety and because the proctoring center was quieter than classrooms where other people interrupted her concentration by wandering in and out. [Scribner] Ms. Van Allen told Ms. Scribner that the OSSS could not provide that accommodation without the requisite documentation of such a need, and that the accommodation was generally reserved for students with ADHD or psychiatric disabilities. Ms. Scribner did not provide such documentation. Nonetheless, her professors often allowed Ms. Scribner to take quizzes and exams in separate rooms or at the proctoring center in order to accommodate her need for extra time. [Van Allen, RP-3, Scribner]

28. According to Ms. Scribner, once the OSSS or she delivered the notification letters to faculty members, she would meet with them as soon as possible to discuss her accommodation needs and any necessary arrangements for providing those accommodations. Ms. Scribner said that during her first year at UVM, the notification letters were sent to faculty via campus mail; after that, because of the delays in the provision of accommodations by some professors and a change in OSSS procedures, she started hand-delivering the letters herself. [Scribner, RP-5]

29. During Ms. Scribner's tenure at UVM, the accommodations listed in her notification letters remained consistent. Some letters listed fewer accommodations but otherwise Ms. Scribner received the same range of accommodations each semester. [RP-3, CP-1]

30. Ms. Scribner said that she informed Ms. Van Allen via e-mail and during face-to-face meetings about the difficulties she was experiencing with some professors both before and after they received the notification letters. [Scribner, CP-1, RP-3] Because of these continuing difficulties, in the fall of 1999, (Ms. Scribner's third year at UVM) she asked the OSSS to give her general notification letters for her professors before the beginning of the semester. These letters were based upon Ms. Scribner's understanding of what she might need in a given class rather than on actual knowledge about specific course requirements and gave a complete list all the accommodations for which Ms. Scribner was eligible. Ms. Scribner stated that Ms. Van Allen reluctantly complied with this request. [Scribner, Van Allen]

#### *D. The allegations*

31. Ms. Scribner stated that Professors Cats-Baril, Gedeon, Buzas, Kvedar, Harrison, and Kraushaar were reluctant or refused to provide her with accommodations for her learning disability. The circumstances surrounding each of these allegations are described below. [Scribner]

**Fall 1997**

32. Ms. Scribner enrolled in courses with Professors Cats-Baril (BSAD 40) and Gedeon (ECON 12) in the fall of 1997. The semester began on September 2, 1997.

**BSAD 40 with Professor Cats-Baril:**

33. The notification letter for this course recommended that Ms. Scribner receive “additional time to complete exams, use of a personal computer/word processor for essay exams, and exam rescheduling when [she] had more than one test scheduled on a given day.” The letter was dated September 7, 1997. Ms. Scribner alleges that Professor Cats-Baril “experimented” with her by asking her to take the first exam in class with the rest of the students (with extra time allowed after the rest of the class finished and left).<sup>8</sup> [RP-3, Scribner]

34. According to Ms. Scribner, when she spoke with Professor Cats-Baril about her accommodation needs, she told him that extra time for an exam usually entailed her taking it in a different setting; he told her he wanted her to take the exam in the classroom with extra time after the rest of the class had finished and left. Ms. Scribner told this investigation that she did not feel that extra time in a classroom was as effective as extra time in a separate, quiet room. Ms. Scribner said that Ms. Van Allen interceded on her behalf. After Ms. Scribner explained to Professor Cats-Baril that taking the exam in a separate, quiet place would be helpful, he allowed her to take the last exam at the proctoring center. [Scribner]

35. Ms. Van Allen did not recall Ms. Scribner mentioning any difficulties with Professor Cats-Baril and therefore had no cause to intercede. [Van Allen] Ms. Van Allen’s notes from her conversation with Ms. Scribner on September 4, 1997 stated only that Ms. Scribner “likes BSAD

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<sup>8</sup> As noted above in paragraph 28, Ms. Scribner did not ask the OSSS for an accommodation that would allow her to take exams in a separate room until January 1999; at that time, Ms. Van Allen told Ms. Scribner that unless she provided proper documentation to show that she needed the accommodation because of her learning disability, the OSSS could not provide the accommodation. Ms. Scribner did not supply the necessary documentation.

40,” listed the course requirements, and noted that they discussed her accommodation needs for her courses. [RP-4]

36. Professor Cats-Baril stated he did not remember the specifics of Ms. Scribner’s accommodation requests and said that Ms. Scribner did not discuss any problems with him about her accommodation needs in his class. He did not remember Ms. Scribner asking for anything she did not get except a change of grade at the end of the semester. Professor Cats-Baril recalled “arguing” with Ms. Scribner about her final grade but not about her accommodation requests. Professor Cats-Baril said that he never spoke with Ms. Van Allen about accommodations for Ms. Scribner. [Cats-Baril]

**ECON 12 with Professor Gedeon:**

37. Ms. Scribner’s notification letter for this course recommended that she receive “additional time to complete exams, reading assistance, explanation of extraneous vocabulary, use of a personal computer/word processor for essay exams, exam rescheduling when [she] had more than one test scheduled on a given day, and note-taker support/copies of lecture notes and/or overheads provided by the professor or a peer.” The letter was dated September 7, 1997. [RP-3, Scribner]

38. Ms. Scribner said that her only difficulty with Professor Gedeon occurred near the end of the semester when Professor Gedeon asked her to take the final exam with the rest of the class. According to Ms. Scribner, Professor Gedeon had allowed her to take exams home throughout the semester and so she was surprised by this request. Because the test was un-timed and students could hand it in whenever they finished, Ms. Scribner initially agreed to take the exam with the rest of the class. She later changed her mind, and told Professor Gedeon that she was not comfortable with the arrangement, and Professor Gedeon allowed her to take the exam at

home. Ms. Scribner felt that Professor Gedeon was very understanding about her need for accommodations and did not ask Ms. Van Allen to speak with her. [Scribner]

39. Professor Gedeon did not recall Ms. Scribner having a problem with accommodations for exams in her class. She stated that if she asked Ms. Scribner to take an exam with the rest of the class, it would have been for the mid-term exam. Professor Gedeon explained that she lectured for the first hour of the class and then gave the mid-term exam and allowed students unlimited time. If Ms. Scribner had asked about taking the test at the proctoring center, Professor Gedeon said she might have asked her to stay since the in-class exam was given with unlimited time. [Gedeon]

### **Spring 1998**

#### **STAT 141 with Professor Buzas:**

40. The semester started on January 12, 1998. Ms. Scribner's notification letter for this course recommended that she receive "additional time to complete exams and possibly quizzes," and exam rescheduling when she had more than one test scheduled on a given day. The letter was dated January 18, 1998. Ms. Scribner alleges that Professor Buzas did not allow her to take her quizzes and exams in a separate testing location. [RP-3, Scribner]

41. Ms. Scribner stated the following: Professor Buzas gave quizzes every Friday at the end of class. She told Professor Buzas several times that she needed to take the quizzes in a separate location. He insisted that she take them with the rest of the class but said that he would allow her to take a make-up quiz if she did not do well. After the second quiz, Ms. Scribner told Professor Buzas that the arrangement would not work because she became distracted when the

other students left at the end of class and, for that reason, had difficulty completing the quiz.

[Scribner]

42. Ms. Scribner said that she tried to handle the situation with Professor Buzas alone but after a few weeks, realized that she needed help. On February 5, 1998, Ms. Scribner sent a letter to Ms. Van Allen stating the following:

"I am in a situation that is pretty upsetting. This is the second semester that I have had to deal with Professors that are trying to experiment with my Learning Disability. This semester I talked with Professor Buzas (Statistics 141), about my Learning Disability and how it affects me with test taking. I explained to him that taking the quizzes are going to be a problem because he conducts it that last 10 minutes of class. He told me that maybe I should try it again in class. I explained to him the first quiz didn't go over smooth, that I didn't feel comfortable. He was persistent that I take the second quiz in class. He asked me a second time how do I feel about that. I once again explained to him that I don't want to have my grade affected by all of this. He said that he wants me to take it again in the class and if I do poorly that I can take a makeup quiz. I told him I wasn't comfortable with this but he insisted. There is only so far I can tell that to a Professor without jeopardizing my relationship with him or my grade. I told him I have test anxiety and he said many people get that and I explained to him I understand, but because of my Language-based Learning Disability I struggle more than the average person does.

I took the second quiz, did poorly and then took a makeup quiz later on in the week. Once again I am behind in his class because I concentrated on the second quiz that I didn't get a [chance] to adequately prepare for the third quiz. He conducts quizzes every Friday. Anyhow, I must have cried so hard today because I'm just soooooo frustrated with Professors who think they can diagnose me what they think is appropriate. I don't need Professors experimenting with me." [CP-1]

43. According to Ms. Scribner, she sent copies of this letter via e-mail to her advisor, Professor Thompson, and Assistant Ms. Woodman. [Scribner, Van Allen, Woodman] Ms. Van Allen eventually made arrangements with Professor Buzas to disregard Ms. Scribner's scores on the first two quizzes and to allow Ms. Scribner to take subsequent quizzes and exams in a separate room. [Scribner]

44. Ms. Scribner said, “To this day, I know [Professor Buzas] didn’t understand me because . . . his teaching assistant, [told] me at the end that [Professor Buzas] thought I was fooling everybody.” [Scribner]

45. Professor Buzas remembered Ms. Scribner speaking with him about her accommodation needs before the first quiz and asking for permission to take quizzes and exams at the proctoring center. According to Professor Buzas, he asked Ms. Scribner if she would be willing to try taking the quizzes in class and she agreed to do so and did well on the first few quizzes. Professor Buzas stated that at some point, Ms. Scribner again asked to be allowed to take the quizzes at the proctoring center but he could not remember how the issue was resolved. [Buzas]

#### **Fall 1998**

##### **BSAD 61 with Professor Kvedar:**

46. The semester started on September 1, 1998. The notification letter for Ms. Scribner for this course recommended that she receive “additional time to complete exams; reading assistance: explaining extraneous vocabulary; providing written versions of any oral exams, quizzes, or questions; exam rescheduling when [she] has more than one test scheduled on a given day; note-taker support: copies of overheads used by professor; ideally, these should be given to [her] before class.” The letter was dated September 13, 1998. Ms. Scribner alleges that Professor Kvedar gave the first quiz orally without providing her with a written copy of the questions and that he gave her extra time on the second quiz but did not allow her to take the quiz in a separate location. [RP-3, Scribner]



47. According to Ms. Scribner, Professor Kvedar gave the first quiz before he received the notification letter and before she had a chance to speak with him about her accommodation needs. Ms. Scribner said Professor Kvedar read the quiz questions to the class and did not write them on the board. Because Ms. Scribner has difficulty with short-term memory, she had to keep asking him to repeat the questions.<sup>9</sup> After the first quiz in the class, Ms. Scribner explained to Professor Kvedar that due to her disability, she needed additional time for the quiz and that she needed to have the quiz questions in written form. She said Professor Kvedar “seemed okay” with her explanation and asked her to stay after class to finish future quizzes if she needed extra time. [Scribner]

48. For the second quiz, Professor Kvedar wrote the questions on the board and Ms. Scribner stayed after class to finish it. After the quiz, Ms. Scribner sent an e-mail message to Professor Kvedar asking to speak with him to explain why staying after class to finish the quiz did not work for her (because she found it disruptive to have the rest of the class leave while she was trying to finish the quiz). Her message stated that she understood that everyone in the class could drop two quiz grades but that she did not want to start the semester that way. Her message further explained that she had had difficulties in the past with professors “wanting to experiment with [her] learning disability by ‘trying’ different ways of giving [her] exams.” The message acknowledged that Professor Kvedar had agreed to allow her to stay after class to finish quizzes, but stated that such a method “conflicted with [her] learning disability.” The message ended by asking for a chance to take another quiz. [CP-1]

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<sup>9</sup> One of Ms. Scribner’s accommodations is to have quizzes and exams questions in written form to compensate for her short-term auditory memory and auditory processing difficulties.

49. According to Ms. Scribner, she also told Professor Kvedar that she needed to take the quizzes in another room and he said that she would be permitted to do that; however, Professor Kvedar switched to take-home quizzes for the rest of the semester. [Scribner]

50. Ms. Van Allen reported that Ms. Scribner called her distraught about the oral quiz Professor Kvedar had given. Ms. Van Allen stated that she offered to speak with Professor Kvedar but could not remember Ms. Scribner's response to her offer<sup>10</sup>; she also suggested that Ms. Scribner ask Professor Kvedar not to count the grade for the first quiz. Ms. Van Allen said she never heard from either Ms. Scribner or Professor Kvedar about how the issue was resolved and assumed that Ms. Scribner had handled the situation on her own. [Van Allen]

51. Professor Kvedar reported that he understood that Ms. Scribner needed more time to take exams and quizzes, that materials needed to be presented to her in written form (e.g., on the blackboard), and that she had difficulty with oral presentations. He stated that she gave him the notification letter after the second quiz. According to Professor Kvedar, he switched from oral to written quizzes because Ms. Scribner said that she had difficulty with oral tests and switched to take-home quizzes because Ms. Scribner told him she needed more time for the quizzes but could not stay after class to finish them. He said he volunteered to drop her first two quiz grades. [Kvedar]

52. Professor Kvedar stated that before switching to take-home quizzes, he suggested to Ms. Scribner that he give quizzes right before a break in the class so that she would have extra time to finish the quizzes during the break. Professor Kvedar said Ms. Scribner did not like the idea and he decided not to pursue it. Professor Kvedar said he got the impression that Ms. Scribner was more comfortable taking quizzes at home and that she worked better without time

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<sup>10</sup> Ms. Van Allen stated that she often spoke with Ms. Scribner about whether she should call a professor on behalf of Ms. Scribner but always let Ms. Scribner's decide whether she should make the call.

constraints. He said that they discussed other options but that this seemed to be the best solution for Ms. Scribner. [Kvedar]

### **Spring 1999**

53. Ms. Scribner enrolled in BSAD 144 with Professor Kraushaar and BSAD 180 with Professor Harrison during the spring of 1999. The semester began on January 20, 1999.

### **BSAD 180 with Professor Harrison:**

54. The accommodation request record<sup>11</sup> for Ms. Scribner recommended that she receive “additional time to complete exams; reading; vocab., rewording, clarification; use of a computer for essays; exam rescheduling; note-taker; taking the exam in parts.” The form is dated January 25, 1999. Ms. Scribner alleges that Professor Harrison refused to give her a time extension to complete a problem sheet and the final paper, and asked her to take the final exam before the rest of the class as a condition to receiving extra time for it. [RP-3, Scribner]

55. Ms. Scribner said that she verbally asked Professor Harrison for an extension of time on a problem set that was due on the same day as an exam in another class. Ms. Scribner stated that Professor Harrison was reluctant to give her the extension and she asked Ms. Van Allen to speak with him. [Scribner]

56. On March 23, 1999, Ms. Scribner also sent an e-mail message to Professor Harrison requesting an extension for the problem sheet because an exam in another class was scheduled on the same day the problem sheet was due. The message also requested a time extension for the final paper that was due on April 8 and asked Professor Harrison to call Ms. Van Allen if he had any questions. Professor Harrison responded by e-mail the next day stating that he had spoken

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<sup>11</sup> Ms. Scribner’s file does not contain copies of notification letters for her for the Spring 1999 semester.

with Ms. Van Allen and that he would give the extension for the problem set. He stated that although he was “a little hesitant about extending the term paper deadline,” he would grant that extension as well. [CP-1]

57. According to Ms. Van Allen, Ms. Scribner called her on March 24, 1999 to say that she was feeling overwhelmed by three assignments that were all due at the same time and wanted advice about how to handle the situation. According to Ms. Van Allen’s notes, Ms. Scribner stated that Professor Harrison was “not supportive” and asked her to call Professor Harrison. Ms. Van Allen told Professor Harrison that extra time was an accommodation granted to Ms. Scribner because of her disability. She said that Professor Harrison questioned whether a time extension to complete the final paper was appropriate given that the paper had been assigned at the beginning of the semester, and stated that he felt Ms. Scribner should have managed her time better. He also told Ms. Van Allen that Ms. Scribner should not have waited until two weeks before the paper was due to ask for an extension.<sup>12</sup> Ms. Van Allen stated that she emphatically told Professor Harrison that “2 weeks notice was NOT last minute and in fact, . . . [Ms. Scribner] was managing her time well . . . [by] asking for help in advance.” After discussing the nature of the assignment with Professor Harrison, Ms. Van Allen concluded that an extension was appropriate. In her file, Ms. Van Allen noted, “Professor Harrison acquiesced a little although I sensed he still felt [the request for the extension] was last minute.” [Van Allen, RP-3]

58. Professor Harrison said that when Ms. Scribner asked for an extension on her final paper two weeks before it was due, he told her that he did not like late work and wanted to speak

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<sup>12</sup> An accommodation request form is completed at the beginning of each semester by the student and the disability specialist. This form, which the student signs, states that the student must inform faculty about the specifics of each accommodation (when, where, and how the accommodation will be provided) at least one week before scheduled exams and/or assignments. Thus, according to UVM policies, a two-week notice was adequate. This information was not included in the older notification letters sent to faculty members prior to the fall of 1999; the new notification letter, initiated in the fall of 1999, includes this information.

with Ms. Van Allen first. Professor Harrison said that he gave Ms. Scribner the extension because Ms. Van Allen "convinced" him that Ms. Scribner was making progress on her paper and that she was not just asking for extra time because she started the paper late. [Harrison]

59. With regard to the request for extra time on the final exam, Ms. Scribner stated the following: Professor Harrison initially told her that in order to have more time on the final exam, she would have to take it a day or two before the rest of the class or at the same time as the rest of the class and stay afterwards to finish it. Ms. Scribner had another class immediately after Professor Harrison's class and, therefore would not be able to stay after class to finish the exam. She also told Professor Harrison that she did not believe it was fair to ask her to take the exam before the rest of the class as she would not have as much time to study as they did. Ms. Scribner consequently scheduled the exam at the proctoring center a few days after the rest of the class took the exam. She said that Professor Harrison became upset with her about the later test date but in the end, allowed her to take the exam as scheduled. [Scribner, CP-1]

60. Professor Harrison said that he agreed to let Ms. Scribner take all her exams at the proctoring center. He did not recall any conversation about the scheduling of the final exam other than that Ms. Scribner scheduled the exam at the proctoring center the Monday after it was given in class. He said that he would have preferred her to take it on the day the exam was given in class or the day before. [Harrison]

**BSAD 144 with Professor Kraushaar:**

61. The accommodation request form recommended that Ms. Scribner receive "additional time to complete exams; reading: vocab., rewording, clarification; use of a computer for essays; exam rescheduling; note-taker; taking the exam in parts." The form is dated January 25, 1999.

Ms. Scribner alleges that Professor Kraushaar refused to give her an extension of time to complete her group project.<sup>13</sup> [RP-3, Scribner]

62. In mid-to late-March, Ms. Scribner asked Professor Kraushaar for an extension of time on her group project assignment because she had several assignments and an exam scheduled at the same time. [Scribner] On March 24, 1999, Ms. Scribner told Ms. Van Allen that she was concerned about coinciding deadlines for assignments in Professor Kraushaar's and Professor Harrison's classes. [Van Allen]

63. Ms. Van Allen spoke with Professor Kraushaar on March 29, 1999 about an extension for Ms. Scribner's group project as well as re-scheduling an exam that was scheduled for the same time. [Van Allen]

64. Her notes<sup>14</sup> of that conversation state:

"Spoke w/ Kraushaar. Explained Shirley's time constraints given [her learning disability] and other course requirements. He was uncomfortable w/ either option – extending [the] project or [the] exam. Her role in [the] project is critical and he feels he would need to make up another exam [for security reasons if it were to be rescheduled]. I explained that given the time required to do the work for his class and Shirley's other classes, there just wasn't enough time [for her to finish all the work at the same time]. He said there were other students in the same situation. I said that wasn't true unless they, too, had a disability that forced them to spend more time w/ their work. We discussed this for awhile. Ultimately, he said he would grant an extension for the project just as he would for any group that might ask. He was not comfortable granting extension because of her learning disability. He will e-mail her. He wants me to make it clear that she's not going to be given the extension because of the disability. Since she was going to be given what she needed (and wanted) I agreed to his conditions.

I called Shirley. Explained above and said she would soon be getting e-mail from professor. She wasn't happy that her disability was being discounted. I concurred but added that since she was going to be given what she needed, it

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<sup>13</sup> The other accommodation that Ms. Scribner required in this course was extra time on quizzes and exams. She and Professor Kraushaar made arrangements for her to come in 15 minutes before class to start quizzes and exams early as a way to provide her with the accommodation of extra time. Ms. Scribner had no problems with this accommodation throughout the course of the semester.

<sup>14</sup> Ms. Van Allen kept a file on each of the students she worked with which included notes from conversations that related to the students' needs or concerns.

really didn't matter why he was granting the accommodation. She was, in fact, still getting it." [RP-3]

65. Ms. Van Allen stated that she did not think that Professor Kraushaar fully understood Ms. Scribner's disability. She said that she considered talking further with Professor Kraushaar about this but decided not to because of Ms. Scribner's fears about being treated differently if too much attention was brought to her disability. [Van Allen]

66. On March 29, 1999, Ms. Scribner received two e-mail messages from Professor Kraushaar in response to her request:

3/29/99, 11:00 a.m.: I've never had a learning disability student request an extension to a project assignment before. I'll need to hear a lot more about the reasons for such an extension before I agree to this precedent. Have the center [OSSS] give me a call.

3/29/99, 6:00 p.m.: Unfortunately I can not agree to an extension to the [project assignments] due this Friday because of your learning disability. However, I have decided to give your team a four-day extension to the deadline just as I would any group that made a good case, as you have, for needing more time. I have done this for interim BSAD 144 reports in the past. [RP-5]

67. Professor Kraushaar said he did not know why he refused to give Ms. Scribner an extension on the group project because of her disability. He stated that he explained to Ms. Van Allen that it was difficult to give extensions for the class project because they involved interviewing clients off campus. He stated that he expects students to plan ahead for assignments and does not give extensions when they ask for them at the last minute. [Kraushaar]

68. Professor Kraushaar stated that his role was to make sure that students with disabilities understand course requirements. Then the students talk with Ms. Van Allen about their accommodation needs and obtain a notification letter. He said that "he [did not] want students to scam him if they [did not] really have a learning disability." Professor Kraushaar said that he has never had difficulties with other students with learning disabilities. [Kraushaar]

**Summer 1999**

**BSAD 146/147 with Professor Kraushaar:**

69. Ms. Scribner alleges that Professor Kraushaar agreed to give her extra time on quizzes and exams for this course but failed to adhere to this agreement. [Scribner]

70. BSAD 146/147 is an intensive, 3-week course on computer networking. The class meets for lecture from 2:00 – 5:00 and for lab from 6:00 – 7:00, Monday through Friday. According to Professor Kraushaar, students sometimes worked in the lab until as late as 9:00 p.m. It is the only computer networking course offered by BSA and while it is not required for the MIS concentration, it is an optional course that can be counted towards the fulfillment of that concentration area. According to Ms. Woodman, no other computer networking courses are offered at UVM. [Kraushaar, Scribner, Woodman]

71. According to e-mail records, Ms. Scribner first contacted Professor Kraushaar about the course on March 15, 1999.<sup>15</sup> Ms. Scribner's e-mail message asked Professor Kraushaar how to go about registering for the course since it required special permission. The message stated that Ms. Scribner did not want to miss the opportunity to take this course because she planned to graduate in the fall. [RP-5]

72. Professor Kraushaar's response on the same day stated:

I have a hold on any registration for BSAD 146,47 [sic] for the summer. I trying [sic] to find out who actually "must have" the summer course to graduate so they can register first. After, these students have registered for the class, I will release the course on a first come first served basis to MIS students that have indicated via email that they would like the course. There is already a waiting list of the course so anyone who must have the course will be bumping an MIS major who has already sent me an email asking to register for the course. Do you absolutely need this course for Dec graduation? There are two MIS concentration courses (BSAD 142 and 143) offered this Fall. [RP-5]

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<sup>15</sup> No one interviewed about the incidents surrounding this course could remember exact dates and times of conversations. This summary attempts to place the information in chronological order. However, the only certain dates are those noted in e-mail messages and in Ms. Van Allen's notes from her file on Ms. Scribner.



73. Ms. Woodman stated that she spoke with Professor Kraushaar before the end of March about the course and they agreed that Ms. Scribner was eligible to take the course. According to Ms. Woodman, Professor Kraushaar told her at that time that he was concerned about Ms. Scribner taking the course because of its intense nature but said that it was Ms. Scribner's decision to make. Ms. Woodman stated that she was not sure if they discussed extra time on quizzes and exams explicitly but that she and Professor Kraushaar talked about the tight time schedule of the class as well as the requirements of the course. [Woodman]

74. Professor Kraushaar stated that when he spoke with Ms. Woodman regarding his concerns about Ms. Scribner's enrollment in the summer class, he tried to explain to her why he would not be able to give Ms. Scribner extra time on quizzes and exams. [Kraushaar]

75. On March 31, 1999 Professor Kraushaar sent an e-mail message to the 12 students, including Ms. Scribner, who were chosen to enroll in the course.<sup>16</sup> In this message Professor Kraushaar explained that the course would be extremely intense and demanding and that some students might not do as well in the course as they did in other courses. The message also detailed the requirements for the course and included the following statement :

"If you don't appreciate this kind of total immersion pressure or you don't perform well with assignments or evaluations that have time limitations, you should NOT take this class. There is no time for extensions to assignments, rework of submitted material, reflection, etc. Simply put there is not enough hours in the day to permit policies that are very manageable in normal classes." [CP-1, Response]

76. After receiving this message, Ms. Scribner met with Professor Kraushaar about the course. According to Ms. Scribner, Professor Kraushaar told her that he did not believe this was

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<sup>16</sup> Professor Kraushaar stated during his interview that students are selected for BSAD 146/147 by first talking with him about why they need the class, what they need to graduate, etc. Professor Kraushaar checks to see that they have the prerequisites and informs them about the class requirements, when it is offered, and the intensity level. [Kraushaar] Ms. Woodman said that students with the most credit hours and closest to graduation were given priority. Ms. Scribner was in that group and therefore was allowed to sign up for the class. [Woodman]

the right course for her to because she could not have extra time to complete homework assignments and that the course might be more difficult for her because of her disabilities. Ms. Scribner said that Professor Kraushaar referred to her request for an extension of time to complete a group project assignment in his spring 1999 BSAD 144 course as an example of the kind of accommodation she could not receive. He also suggested that she look at other schools that offer a similar course and request a transfer of the course credits. [Scribner]

77. Professor Kraushaar stated that he and Ms. Scribner had a number of discussions about what was involved in, and the time frames for, the course. According to Professor Kraushaar, he told Ms. Scribner that it would be difficult, if not impossible, to give her extra time on the quizzes and exams because he needed time to prepare for class and extra time would interfere with the next scheduled activities in class. Professor Kraushaar said that they had no agreement about extra time for quizzes and exams and he advised her that it would be a very difficult class but that it was up to her to decide whether to take it. Professor Kraushaar said he believed Ms. Scribner was clear about what she was getting into and he was surprised that she decided to take the course, but that she told him that she felt the course was particularly important to her goals. [Kraushaar]

78. Professor Kraushaar said he advised Ms. Scribner to speak with Ms. Woodman about other course options and with Ms. Van Allen to determine whether she would be able to complete the course without accommodations. He also said that he and Ms. Scribner discussed alternatives to his course and that Ms. Scribner asked about taking a similar course at Champlain College; Professor Kraushaar told her he was not sure if the credits would transfer and that she should talk with Ms. Woodman about these courses. He said he understood that courses at Champlain College could substitute for his course. [Kraushaar]

79. Ms. Scribner stated that after speaking with Professor Kraushaar, she looked into courses offered at other schools and then met with Ms. Woodman, who told her that she could not transfer credits for a similar course from another college but that she could take alternative courses (such as web design, E-commerce, and web publishing) at UVM or serve as a teaching assistant for a class for credit towards her major. Ms. Scribner told this investigation that these alternative courses had nothing to do with computer networking, that Professor Kraushaar's class was the only one that covered this topic, and that she wanted to take it because it was important for her career goals. Ms. Scribner said she felt Ms. Woodman was giving her unacceptable alternatives and brushing her off, in spite of her explanations about why the networking class was so important to have as part of her MIS concentration in preparation for future work. Ms. Scribner said she told Ms. Woodman that she would think about taking an alternative course but ultimately decided to enroll in Professor Kraushaar's class.<sup>17</sup> In a memo to herself dated April 22, 1999, Ms. Scribner stated that she met with Ms. Woodman and that Ms. Woodman explained to her "that the networking class would not be feasible giv[en] the time constraint." [CP-1, Scribner]

80. Ms. Woodman said that she spoke with Ms. Scribner about BSAD 146/147 in the spring of 1999. Ms. Woodman said that she told Ms. Scribner that she needed to decide if she could handle the course the way it was set up and that she had concerns about Ms. Scribner taking the class because she could not have time extensions on the quizzes and exams. Ms. Woodman said that Ms. Scribner did not talk about her accommodation needs at that time but

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<sup>17</sup> In an e-mail message dated April 22, 1999, Ms. Scribner informed Ms. Woodman of her decision to enroll in BSAD 146/147.

indicated that she wanted to take the class. Ms. Woodman denied advising Ms. Scribner not to take the class but acknowledged suggesting other alternatives for Ms. Scribner.<sup>18</sup> [Woodman]

81. According to Ms. Van Allen's notes, on April 8, 1999, Ms. Woodman told her that she was concerned about Ms. Scribner taking the course with Professor Kraushaar because it was "very intensive and extensions [weren't] really possible given the structure of the class." [RP-3] Ms. Van Allen said that Ms. Woodman told her that Professor Kraushaar had raised concerns about whether Ms. Scribner could handle the summer course given what Professor Kraushaar described as Ms. Scribner's difficulties with deadlines during the spring semester.<sup>19</sup> Ms. Van Allen recommended that Professor Kraushaar outline the requirements for the class and any possible alternatives for the class but did not follow-up on this recommendation. [Van Allen]

82. Ms. Van Allen notes also state that they "could probably move the final [exam] but [that] daily work [quizzes, homework] is harder to extend," that it would be up to Ms. Scribner to decide whether to take the course, that Ms. Van Allen was concerned about the implications for Ms. Scribner's graduation if she did not take the course, and that they would need to find a substitute course for Ms. Scribner. According to Ms. Van Allen's notes, Ms. Woodman told her that Ms. Scribner could take CS148 as a substitute for BSAD 146/147. [RP-3]

83. Ms. Scribner stated during the spring semester she discussed with Ms. Van Allen the kinds of accommodations that would be reasonable for the BSAD 146/147 class. According to Ms. Scribner, Ms. Van Allen told her that she would not be able to receive all her usual accommodations, such as extensions on project assignments, but that extra time for quizzes and exams was not an unreasonable request. [Scribner]

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<sup>18</sup> Ms. Woodman said later that Professor Kraushaar advised Ms. Scribner not to take the class.

<sup>19</sup> See paragraphs 62-68 above.

84. Ms. Van Allen reported that during an April 1999 conversation with Ms. Scribner, they discussed the requirements of the course, how rigorous and intense the class was, and the time demands for the assignments. Given the course format, Ms. Van Allen informed Ms. Scribner that she would probably not be able to have project assignments and tests postponed. They also discussed alternatives Ms. Scribner could pursue if she did not take this course which was a concentration course for her major. Ms. Van Allen told Ms. Scribner that she needed to speak with Professor Kraushaar about what accommodations would be possible and needed to decide about taking the class without all her usual accommodations. Ms. Van Allen said that Ms. Scribner never got back to her about this and she found out later from someone else or the computer that Ms. Scribner had enrolled in the class. [Van Allen]

85. Ms. Van Allen's notes about the meeting in April with Ms. Scribner included the following information: Ms. Scribner showed her Professor Kraushaar's March 31<sup>st</sup> e-mail message describing the course and its requirements. Ms. Van Allen told Ms. Scribner that it would be "important to find a substitution course since extending graduation till spring didn't make sense." Ms. Scribner asked if a course at the Community College of Vermont would suffice and Ms. Van Allen told her that would be up to the business school to decide. Ms. Van Allen also suggested doing an independent study if the course credits did not transfer. Ms. Scribner told Ms. Van Allen that she would speak with Professor Kraushaar and get back to her. [RP-3]

86. According to Ms. Scribner, she met a second time with Professor Kraushaar to request extra time on quizzes and exams. Ms. Scribner stated that during this meeting, Professor Kraushaar agreed to allow her into the course and to give 15 extra minutes for quizzes but that they did not discuss the amount of extra time she would be given for exams. Ms. Scribner stated

that Professor Kraushaar agreed to the same arrangement used in the spring BSAD 144 class, namely, that Ms. Scribner would start quizzes 10-15 minutes before the start of class. [CP-1]

87. On June 16, 1999 Ms. Van Allen and Ms. Scribner discussed the course. Ms. Van Allen's version of the discussion is as follows: Ms. Scribner said she was taking the course even though she knew that she was not going to get all the accommodations she usually receives, namely that she would not receive extension for projects and "quizzes [and] tests could not be postponed [or] delayed." Ms. Scribner said she did not need a notification letter because she felt that Professor Kraushaar knew what accommodations she needed. Ms. Van Allen also advised Ms. Scribner to check with Professor Kraushaar to see if he needed a notification letter and reminded Ms. Scribner that she would be back at the beginning of the summer class period to give Ms. Scribner a notification letter if she needed one.

88. Ms. Van Allen said that she was uncomfortable with the fact that the accommodation request was not in writing and felt it was odd that Ms. Scribner did not want a letter because she usually wanted everything in writing. When asked about whether students are informed about what happens if they do not get a notification letter, Ms. Van Allen said that Ms. Scribner would have learned about this in her "Conquering College" course (special course offered to students with disabilities). Ms. Van Allen stated that she did not think that Ms. Scribner had spoken to Professor Kraushaar about accommodations prior to this meeting because Ms. Scribner was so vague. [Van Allen, RP-3]

89. According to Ms. Scribner, during this conversation, she told Ms. Van Allen not to send a letter to Professor Kraushaar because she believed he had agreed to provide the accommodations she needed and, therefore, a notification letter was unnecessary. In addition, Ms. Scribner stated that Professor Kraushaar was familiar with her, her disability, and her

accommodations needs because he was her advisor and she had taken his course the previous semester. Ms. Scribner stated that she met with Professor Kraushaar before the beginning of class specifically to avoid any of the usual delays in receiving accommodations; she knew this was critical due to the intense nature of the class. [Scribner, CP-1]

**BSAD 146/147 begins Tuesday, July 6, 1999**

90. Ms. Scribner approached Professor Kraushaar after the first day of class to discuss how she would take the quizzes. According to Ms. Scribner, she asked when she should come in to start the first quiz and "he literally just looked down on the floor and was frustrated, and [said], this is not going to work, this is not going to work" and told her that he did not have time to come in early to give her the quiz. Ms. Scribner said that she started to panic and suggested that she audit the course instead of taking it for credit but that Professor Kraushaar said he did not want her to audit the course because if she did, he did not believe she would work as hard as the others students and, as a result, would compromise the quality of her group's assignments. Ms. Scribner recalled that Professor Kraushaar agreed in the end to allow her to audit the course and signed a paper allowing her to do so. However, she said she never turned in the paperwork to change her enrollment status. [Scribner]

91. Professor Kraushaar stated that before the course started, he and Ms. Scribner discussed whether she could audit it and that he told her that he did not think auditing was appropriate because the course was so interactive. He did not recall Ms. Scribner mentioning the option of auditing the course after it began. [Kraushaar]

92. Ms. Scribner explained that students in the course took a quiz every day at the beginning of class, another quiz during the lab at the end of the day, and a weekly exam. Ms. Scribner stated that she did not have problems with the lab quizzes because she usually had extra

time to finish the quizzes after the other students had left since two teaching assistants stayed after class. Ms. Scribner said that she needed to start the quizzes at the beginning of class 10-15 minutes before the other students arrived in order to finish them at the same time as the rest of the class. [Scribner]

93. Professor Kraushaar gave the first quiz on the second day of class and gave everyone extra time to complete it. According to Ms. Scribner, after class he told her that he had given the class extra time on the quiz to accommodate her needs. Ms. Scribner said that Professor Kraushaar did not give as much time as she needed and that taking the quiz in class was not helpful.<sup>20</sup> Ms. Scribner stayed in the class for the remainder of the week, took all the scheduled quizzes, and completed the project and presentation assignments due after the first weekend of the course. [Scribner]

94. According to Professor Kraushaar, Ms. Scribner asked for more time only for the last quiz of the first week. He said he told Ms. Scribner that they had agreed that she would not get extra time on quizzes and he did not give her the extra time she requested. [Kraushaar]

95. Professor Kraushaar told this investigation that he gave 8 quizzes during the course: 3 quizzes per week during the first two weeks, and two quizzes during the last week. He said the quizzes covered information in the reading assignment from the previous day and that he created the quizzes shortly before class each day. Professor Kraushaar said that he began each class with a question and answer period about the reading assignment before he gave the quiz, which usually lasted 5-10 minutes. He stated that when the students finished the quizzes, he either collected them to grade later or had the students exchange and grade each other's quizzes. He then went over the answers during the lecture portion of class. Professor Kraushaar stated that



he gave the quizzes in this manner as a pedagogical tool, to help him gauge students' progress and understanding of the material in an immediate, interactive way, and to help the students focus immediately on what they had learned from the previous night's reading. Professor Kraushaar stated that if Ms. Scribner had taken the quizzes before the class began or otherwise out of this sequence, she would have lost the benefit of the related pre-quiz question and answer session and the post-quiz discussion. [Kraushaar]

96. Ms. Scribner denied that Professor Kraushaar had a question and answer period before the quizzes. She said students could ask questions before the quiz but Professor Kraushaar did not initiate discussions about the previous night's reading. Ms. Scribner said that the students exchanged quizzes to correct them only once and that otherwise, Professor Kraushaar corrected them and handed them back the next day. [Scribner]

97. Ms. Van Allen stated that when she returned from vacation in early July, she learned that Ms. Scribner had not called while she was away. However, Ms. Scribner called her on Friday, July 9<sup>th</sup> and said she had expected to receive some accommodations for the course but that Professor Kraushaar would not give her extra time on the quizzes and exams and had stated that he did not want to feel pressured to prepare the quizzes in advance. Ms. Van Allen told Ms. Scribner that she thought it was reasonable for her to ask to start quizzes 15 minutes early. She asked Ms. Scribner if accommodation had been arranged for the upcoming exam on Tuesday, Ms. Scribner had "no clue." Ms. Van Allen thought it odd that Ms. Scribner did not know what the arrangements would be before the upcoming exam as she usually worked that out with professors ahead of time. [Van Allen, RP-3]

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<sup>20</sup> Ms. Scribner explained that she preferred to take her quizzes and exams in a separate space because of her test anxiety. However, Ms. Scribner never submitted documentation to UVM establishing that she needed this accommodation for her disability.

98. According to Ms. Van Allen, Ms. Scribner was quite “panicky” as it was the last day to change her status in the course to that of an audit and asked for an extension of that deadline. Ms. Van Allen then called the registrar’s office who said that they would extend the deadline until the following week for Ms. Scribner.

99. Ms. Van Allen offered to call Professor Kraushaar because she did not think that extra time for the quizzes and exams was an unreasonable request, but Ms. Scribner did not want her to do so because she said Professor Kraushaar had already told her that she could not have extra time on a quiz that week. Ms. Scribner also told Ms. Van Allen that she did not need extra time on the lab quizzes but only for those held during class time. [Van Allen, RP-3]

100. Ms. Scribner stated that by the following Monday, she was frightened because the class was scheduled to take an exam the next day, and she did not think she would receive additional time on it; in addition, she had not done well on the previous quizzes. Ms. Scribner stated that she was feeling a great deal of pressure and anxiety at this point because Professor Kraushaar had denied her request for extra time and very reluctant to let her audit the course. Ms. Scribner said she tried to contact Professor Kraushaar by e-mail to ask for extra time on the exam but he did not respond. She also spoke with Ms. Van Allen at length, who volunteered to call Professor Kraushaar on her behalf. However, Ms. Scribner declined this offer, stating that she did not think that Ms. Van Allen would be able to reach Professor Kraushaar and that she feared that if Ms. Van Allen spoke with Professor Kraushaar, he would become even more upset with her (Ms. Scribner). Ms. Scribner decided at this time (Tuesday of the second week of class) to drop the course. [Scribner]

101. Ms. Scribner informed Ms. Van Allen on Tuesday, July 13<sup>th</sup> that she had decided to drop the course and asked Ms. Van Allen to write a letter to the bursar so she could get

reimbursed for the tuition for the course. Ms. Scribner stated that she was so angry at that point that she did not inform Professor Kraushaar or Ms. Woodman that she was dropping the course.

[Scribner]

102. Ms. Van Allen spoke again with Ms. Scribner on July 13<sup>th</sup>. Her notes state the following:

Spoke w/ Shirley. She has decided to withdraw from the class. She feels she's not getting acc[ommodations] she needs and doesn't want to deal w/ the repercussions if I call Kraushaar and press the issue. We discussed the issue for a long time. I told her I would be more than happy to discuss this w/ Kraushaar as I believed she should 1) be given 10-15 additional minutes before class, 2) additional time for exams. She said he has not gotten back to her about acc[ommodations] for the exam today even though she has sent him 2 e-mails. She has spoken w/ [the assistant controller] who said he would refund her money if I sent him a letter explaining the situation. She also indicated that I could speak w/ [Ms. Woodman] but she didn't want [Ms. Woodman] to intervene on her behalf either. At one point, she mentioned she might grieve the situation. I explained that I didn't think this was a good idea because we weren't making any effort to resolve the situation (i.e., Shirley wasn't giving me or [Ms. Woodman] permission to speak w/ Kraushaar). I added that the situation was even greyer [sic] because Kraushaar had not received an official accommodation letter from our office so technically, he might not be required to do anything. She said he knew about her issues/disability from the previous class. I explained that this was a different class, those acc[ommodations] were specific to that class although they might be similar. I reminded her that I had asked her several times if she or he wanted a letter. I explained that if I and/or [Ms. Woodman] spoke with Kraushaar and he still refused to provide [extra time], then grieving seemed reasonable. Shirley also said she wasn't sure what acc[ommodations] she could have. I explained that to some degree that depended on 1) the requirements of the class and 2) whether any of these requirements were essential. We discussed this for awhile. [RP-3]

103. Professor Kraushaar said he has never had a student ask for accommodations for the summer class. [Kraushaar]

#### ***E. UVM internal investigation***

104. In the fall of 1999, Legal Aid's Disability Law Project filed a complaint on Ms. Scribner's behalf with UVM's Office of Affirmative Action/Equal Opportunity ("AAEO")

alleging that Professor Kraushaar had failed to grant Ms. Scribner reasonable accommodations BSAD 146/147. The complaint did not mention Ms. Scribner's allegations concerning the other courses described above. [RP-6, RP-8]

105. The AAEO investigation interviewed Professor Kraushaar, Ms. Scribner, and Ms. Van Allen. Its report summarized Ms. Scribner's learning disability, UVM policies and procedures for requesting accommodations, and described the BSAD 146/147 summer course and the interactions between Ms. Scribner, Professor Kraushaar, and Ms. Van Allen during the spring and summer 1999. The report included the following assessments and conclusions:

Although there are have been instances where students worked out informal agreements with professors without the benefit of OSSS, the only way a student is guaranteed accommodations is by following University procedures.

\* \* \* \* \*

BSAD 146/147 . . . is not a required course, but it would fulfill the requirements of Ms. Scribner's concentration. Other available courses would serve the same purpose.

\* \* \* \* \*

Dr. Kraushaar does not dispute that he was familiar with Ms. Scribner's disability. In fact, he questioned whether the nature of the class would preclude her from reaching her full potential.

Dr. Kraushaar stated that he met with Ms. Scribner twice before the course began and each time indicated to her that he would not be able to provide her with accommodations. This is corroborated by Ms. Van Allen who recalls that when she spoke to Ms. Scribner in June, a month before the course began, Ms. Scribner told her than [sic] she understood that she would not be able to get extensions on projects and that quizzes and tests could not be delayed.

\* \* \* \* \*

The investigator finds that Dr. Kraushaar did not deny Ms. Scribner accommodations based on her disability. Ms. Scribner admits that she did not follow UVM's procedures for requesting accommodations. Having worked with OSSS for three years, she was fully aware of the policy. Further, Ms. Van Allen repeatedly asked her if she wanted a letter for Dr. Kraushaar requiring certain accommodations, but Ms. Scribner declined the offer.

Ms. Scribner alleges that she had a verbal agreement with Dr. Kraushaar that she would get some accommodations. Dr. Kraushaar denies this and the evidence backs him up. His e-mail to the registered students, while not saying so directly, certainly implies that extra time would not be provided to students. Ms. Scribner read the e-mail and met with both Dr. Kraushaar and Dr. Woodman who advised her not to take the course. She also discussed the e-mail with Ms. Van Allen who interpreted it to mean that quizzes and exams could not be delayed or postponed.

There is no evidence of a formal request for accommodations to the certifying office. When Ms. Scribner finally made a request of Ms. Van Allen, she refused to allow the latter to relay her recommendations to Dr. Kraushaar. Additionally, there is insufficient evidence to prove that an informal, verbal agreement between Dr. Kraushaar and Ms. Scribner was in place. Absent evidence that accommodations were requested, this investigator cannot find that Dr. Kraushaar failed to provide accommodations to Ms. Scribner. Given that there is no evidence of a request for accommodations, it is not necessary to determine whether extra time on quizzes and exams would have been reasonable under the circumstances surrounding the BSAD 146/147 class. [RP-8]

#### ***F. Additional allegations***

106. Ms. Scribner also alleges that some of UVM's policies and procedures place an undue burden on students with learning disabilities. Specifically, she said that the general procedure for obtaining notification letters is cumbersome and causes delays and that the note-taking procedure prevents students from obtaining copies of class notes in a timely fashion.

##### **Procedure for obtaining a notification letter**

107. Ms. Scribner alleges that the general process of obtaining notification letters for students with learning disabilities places an undue burden on the students because they must first attend class, then meet with the learning disability specialist to determine the appropriate accommodations for each course, and then deliver the notification letter to the faculty and find a time to meet to discuss the contents of that letter. The time lapse between the first day of class and the time that the student actually discusses the notification letter with a faculty member can take up to two weeks. In the meantime, the student is placed in the position of having to

advocate for him/herself if any accommodations are needed prior to the delivery of the notification letter. [Scribner]

108. Ms. Scribner stated that the procedure for requesting and obtaining accommodations caused conflict with professors during her first two years at UVM, especially if a quiz was given during the first week of class before she had a chance to meet with Ms. Van Allen and obtain the notification letters. Ms. Scribner stated that, under these circumstances, at the beginning of the class she had explain to the professor that 1) she needed accommodations such as extra time on quizzes, 2) she would speak with UVM's learning disabilities specialist to determine which accommodations were appropriate for that class, and 3) the professor would be getting a notification letter from the OSSS about her accommodation needs.

**Note-taking assistance procedure**

109. According to Ms Van Allen, faculty members are responsible for identifying a note-taker. They are supposed to choose several volunteers in the class, review their notes, and pick the student with the best notes. This student becomes the note-taker for the semester and receives training from the OSSS in note-taking. The note-taker leaves a copy of his/her notes once a week at the OSSS to be picked up by the student with the disability. The student with the disability must go to the OSSS and fill out a form to request a copy of the notes each week. A student may pick up notes within 24 hours after the OSSS receives them; however, Ms. Van Allen stated that it can take up to a full week after a class for a note-taker to get notes to the OSSS. [Van Allen]

110. Ms. Scribner stated that a friend was willing to take notes for her in most of her classes and she therefore was able to avoid the note-taking procedure described above. However, she requested a note-taker for three of her classes. For the first class, she and the note-

taker initially tried to copy the notes in the Economics Department office to save time but after the first few classes, the Economics Department told them that they could no longer do so. Subsequently, the note-taker submitted notes to the OSSS and Ms. Scribner had to pick up the notes a few days later. Ms. Scribner utilized the OSSS procedure for the second class in which she requested note-taking assistance. Ms. Scribner eventually spoke with Ms. Van Allen to ask about ways to circumvent the procedure because of the time delay in receiving notes. Ms. Van Allen told Ms. Scribner that she could not change the process but suggested that Ms. Scribner request permission to copy notes in the department offices where she was taking classes. During Ms. Scribner's last semester, she asked for and received permission to make copies of notes in the School of Business Administration office, thus facilitating a quick turn around. [Scribner]

***G. Policies and procedures at other institutions***

111. Ms. Scribner attended Adirondack Community College ("ACC") from May 1994 to December 1995 and stated that she had no difficulty receiving accommodations. She said that at ACC she obtained notification letters before the start of classes and that none of her professors questioned her accommodation needs. [Scribner]

112. Sharon Hack of the Special Services Office at Adirondack Community College stated that the timing of the delivery of notification letters depends entirely on when students request them and that if students request notification letters prior to the beginning of the semester, her office will provide the letters. She also stated that the office does not rely on the course syllabi in determining a student's accommodations; instead, the determination is made during the initial assessment of each student's

disability. The office generates one notification letter each semester which is applicable to all of the student's classes. [Hack]

113. Ms. Scribner also periodically attended the Community College of Vermont ("CCV") between the spring of 1988 and the summer of 1996 and stated that she had no difficulty receiving accommodations.

114. According to Mel Donovan, the state ADA Coordinator for CCV, students with disabilities meet with the ADA coordinator at their campus site to determine the students' accommodation needs. The accommodations are based on course descriptions so individual letters are sent to each professor. CCV prefers that students set up their accommodations before the beginning of the semester. Ms. Donovan said that most students come forward during registration so the ADA coordinators can send out the letters to the professors before the first class. [Donovan]

#### ***H. Department of Education, Office of Civil Rights***

115. This investigation spoke with Ralph D'Amico, a 504 post-secondary education specialist at the Department of Education, Office of Civil Rights (OCR) in Boston. According to Mr. D'Amico, once a university makes an initial determination that a student has a disability and needs accommodations, the university is on notice of these facts. Therefore, a policy which requires a student to obtain a notification letter at the beginning of each semester is redundant and unnecessary, and amounts to a requirement that the student obtain re-certification each semester. Mr. D'Amico stated that once a student's eligibility has been established, a university should send notification letters to professors each semester rather than require a student to meet with the learning disability specialist each semester to obtain notification letters. He said that making



students "jump through the same hoops" every semester causes unnecessary delay. Mr. D'Amico also noted that allowing students with physical disabilities to obtain notification letters before the start of a semester but not allowing students with learning disabilities to do so, might be construed as treating students with learning disabilities in a disparate manner. [D'Amico]

## II. Analysis

Vermont's Fair Housing and Public Accommodations Act 9 V.S.A. §4502 (c)(1) and (5) state:

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

(1) A public accommodation shall provide an individual with a disability the opportunity to participate in its services, facilities, privileges, advantages, benefits and accommodations.

(5) A public accommodation shall make reasonable modifications in policies, practices or procedures when those modifications are necessary to offer goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.

Ms. Scribner's Charge alleges that UVM discriminated against her because of her disability because six professors expressed reluctance or refused to provide her with the reasonable accommodations she requested for their classes. The Charge also alleges that UVM's policies and procedures place an undue burden on students with disabilities and fail to ensure that they receive accommodations in a timely manner. The Charge further alleges that, as a result of delays in obtaining reasonable accommodations, she could not earn the credits necessary to graduate on time. In order to sustain her burden of proof on these claims under 9 V.S.A. §4502 (c)(1) and (5), Ms. Scribner must show by a preponderance of the evidence that UVM failed to

provide reasonable accommodations in a timely manner, or that the policies and procedures place an undue burden upon students with disabilities.

***A. Ms. Scribner's disability and need for accommodations***

None of the following facts is disputed by either party:

- Ms. Scribner was a qualified student with a disability and required academic accommodations.
- Before enrolling at UVM, Ms. Scriber provided the university with adequate documentation of her disability and requested academic accommodations.
- Before Ms. Scribner enrolled at UVM, Ms. Van Allen generated a list of approved reasonable accommodations for Ms. Scribner.

***B. Reluctance or refusal to provide accommodations***

Ms. Scribner alleges that six of her professors expressed reluctance or refused to provide her with reasonable accommodations she requested. The circumstances of each course is discussed separately below.

***i. BSAD 40 with Professor Cats-Baril***

While Professor Cats-Baril gave Ms. Scribner extra time for the first exam, he would not allow her to take the exam in a separate testing location. When Ms. Scribner explained the benefits she gained from taking exams in a separate location, he allowed her to take the final exam at the proctoring center.

Since Ms. Scribner never provided Ms. Van Allen with medical documentation showing that she needed to take exams in a separate location because of her disability, this investigation believes that Professor Cats-Baril's initial refusal to allow her to take the first exam in a separate location violated no legal obligation.

**ii. ECON 12 with Professor Gedeon**

Ms. Scribner stated that Professor Gedeon asked her to take the final exam in class rather than as a take-home exam (as Ms. Scribner had done for previous exams in this class). The final exam was un-timed and this arrangement would have provided Ms. Scribner with the accommodation recommended by the OSSS ("additional time to complete exams"). However, Ms. Scribner told Professor Gedeon that she was not comfortable with that arrangement so Professor Gedeon allowed her to take the test as a take-home exam. As in the situation with Professor Cats-Baril, Professor Gedeon granted Ms. Scribner an accommodation beyond that which UVM was obligated to provide.

**iii. STAT 141 with Professor Buzas**

Ms. Scribner alleges that Professor Buzas "experimented" with her by requiring her to take quizzes with the rest of the class and giving her additional time on the quizzes after the other students had turned in their quizzes and left the classroom. After the first quiz, Ms. Scribner told Professor Buzas that she became distracted when other students left class while she was finishing her quiz and asked him to allow her to take the quizzes in a separate location. Professor Buzas asked Ms. Scribner to take the second quiz in class as well causing Ms. Scribner to ask Ms. Van Allen to intercede. Ms. Van Allen spoke with Professor Buzas, who agreed to disregard the scores for the first two quizzes and to allow Ms. Scribner to take subsequent quizzes and exams in a separate location. Thus, Professor Buzas provided an accommodation (a separate testing location) which UVM had not determined to be necessary for Ms. Scribner's disability.

**iv. BSAD 61 with Professor Kvedar**

Ms. Scribner said she had difficulties with the first quiz because Professor Kvedar presented the questions orally rather than in written form. The quiz was given before Ms.

Scribner spoke with Professor Kvedar about her accommodation needs and before he had received the notification letter; thus, he had no knowledge of her needs. After the first quiz Ms. Scribner told Professor Kvedar that she needed the questions in written form and extra time to finish the quiz. Professor Kvedar provided those accommodations for the second quiz. Ms. Scribner later asked him to allow her to take any subsequent quizzes in a separate location. Professor Kvedar then switched to take-home quizzes, in part to accommodate Ms. Scribner's need.

**v. BSAD 180 with Professor Harrison**

According to Ms. Scribner, Professor Harrison was initially unwilling to give her an extension for a problem set and the final paper, and asked her to take the final exam before the rest of the class in order to receive extra time on it. After speaking with Ms. Van Allen, Professor Harrison reluctantly agreed to give Ms. Scribner an extension on the problem set and final paper. Professor Harrison was upset when Ms. Scribner rescheduled her final exam at the proctoring center four days after the rest of the class took it, but he allowed her to take the exam as scheduled. Ms. Van Allen and Ms. Scribner both stated that Professor Harrison expressed reluctance and skepticism about Ms. Scribner's accommodation needs. Ultimately, however, Professor Harrison agreed to provide all the accommodations Ms. Scribner requested.

**vi. BSAD 144 with Professor Kraushaar**

Professor Kraushaar initially refused to grant Ms. Scribner's request for an extension on a group project assignment. After speaking with Ms. Van Allen, Professor Kraushaar stated that he would not grant the extension because of Ms. Scribner's disability, but that he would give the group an extension "just as I would any group that made a good case." Thus, in the end, Ms. Scribner, received what she asked for, but not because of her disability.

In each of these six courses, Ms. Scribner received all the accommodations to which she was entitled. Two professors – Harrison and Kraushaar – expressed skepticism and a lack of understanding about Ms. Scribner’s need for accommodations. According to Ms. Van Allen, Professor Harrison questioned whether Ms. Scribner needed the extension because of a time management problem rather than because of her disability. Ms. Van Allen’s notes also documented Professor Kraushaar’s discomfort in granting extensions to Ms. Scribner and Ms. Van Allen’s belief that Professor Kraushaar did not fully understand Ms. Scribner’s disability.

This evidence may point to the need for UVM to further educate some faculty members about disabilities and accommodations. The attitude of some faculty members may have had a negative impact on Ms. Scribner’s experience at UVM and her sense of well-being. However, there is no evidence that any of these professors treated Ms. Scribner in a disrespectful or demeaning manner, or flatly refused to provide the accommodations she requested. In the instance where Professor Kraushaar refused to grant an extension because of Ms. Scribner’s disability, he gave her the extension for another reason. Therefore, in the instance of these six courses, this investigation believes that Ms. Scribner has not shown that UVM failed to comply with the Vermont Fair Housing and Public Accommodations Act.

### ***C. Failure to provide reasonable accommodations in a timely manner***

#### **1. Notification letters**

Ms. Scribner alleges that she experienced delays in receiving accommodations due to UVM’s policies and procedures. Specifically, Ms. Scribner claims that because OSSS’s procedures did not allow her to request a notification letter for a course until after classes started, the faculty did not receive the letters for as much as two weeks after the beginning of some courses. As a result, Ms. Scribner alleges that she was placed in the awkward position of asking

teachers for accommodations before they had received the notification letters. She also argues that UVM's policies impose an undue burden on students with learning disabilities because they require students to meet with the learning disability specialist at the beginning of every semester to determine accommodations for each class. UVM argues that these meetings are necessary in order to determine appropriate accommodations in light of a student's learning disability and the requirements of each class.

Ralph D'Amico of the OCR stated that such a policy can result in unnecessary delays in the provision of accommodations and can place an undue burden on students with learning disabilities by requiring them to "jump through the same hoops" each semester in order to obtain accommodations. He also questioned why the OSSS would send out notification letters for students with physical disabilities before the beginning of a semester but would not do so for students with learning disabilities.

Adirondack Community College ("ACC") and the Community College of Vermont ("CCV"), do not require students to attend the first day of classes before issuing a notification letter and provides the letters before classes begin. In the case of ACC, once the college determines that a student has a disability that requires accommodations, it generates one notification letter each semester that is applicable to all classes. At CCV, while individual letters are drawn up for each class, they are based on the course description and can be generated before the start of classes.

During Ms. Scribner's first three semesters at UVM, she met with Ms. Van Allen after her first week of classes in order to determine the accommodations she needed for each class. The OSSS then sent notification letters to faculty members via campus mail, causing delays in the delivery of the letters. Subsequently, UVM changed its policy to require students to hand-

deliver the notification letters to their professors in order to avoid these delays. However, even under the new procedure, notification letters still may not reach professors until well into the second week of classes. In several instances, Ms. Scribner's professors did not receive the letters until after they had given one or two quizzes. In each instance, Ms. Scribner was forced to explain to her professors that she had a disability, that she needed accommodations, and that they would be receiving a letter to that effect.

UVM's procedures appear to place an undue burden on students with learning disabilities. This investigation believes that there does not appear to be a valid reason for requiring students with learning disabilities to utilize such a cumbersome process for every course in every semester.

UVM argues that the process is necessary in order to tailor the accommodations to the requirements of each class. However, Ms. Scribner's accommodation needs were consistent throughout her career at UVM, making the process redundant when required for each course each semester. Moreover, since the student and professor must work out accommodation arrangements for each course, there does not appear to be a valid reason for not delivering letters to professors before the beginning of each course so the arrangements can be worked out before the course begins or on the first day of a course. At that time, if a student is not able to obtain a requested accommodation or the professor contests an accommodation, he or she can contact the learning disability specialist to resolve the matter and avoid additional delays. During the fall 1999 semester, Ms. Scribner did in fact obtain generic notification letters from Ms. Van Allen prior to the start of the semester and reported no difficulties with her accommodations.

UVM policy states that "[s]tudents are encouraged to request accommodations as early as possible in the semester; if requests for accommodation are not made at least five academic days

prior to the date when needed, the provision of that accommodation cannot be guaranteed.” If a student requested notification letters immediately after attending the first week of his/her classes, he/she would not be able to take the notification letters to each professor and set up meetings with each professor until some time during the second week. If he/she had a quiz during the first or second week of the semester (as was often the case for Ms. Scribner), the provision of the accommodation would not be guaranteed because the request would not have been made 5 days prior to the date it was needed. Thus, UVM’s policy makes no provision for the accommodation needs of a student with a learning disability during that time period between the first day of classes and the day that a student can meet with his/her professors and make arrangements for his/her accommodations. Moreover, according to OCR standards, a university must provide accommodations in the interim period between the time a student makes an initial request for accommodations at the beginning of his/her academic career and when the student’s disability and eligibility for accommodation is assessed and reasonable accommodations are identified. UVM’s policy appears to contradict OCR standards by not making any provision for providing accommodations during this interim period. *San Jose State University* 4 NDLR ¶1358 (OCR Region IX, 1993)

The policy also states that “[I]f a student gives his/her permission to provide the faculty member(s) with Notification at a later date, such classroom accommodations will be provided in accordance with the procedure; however, in no event will the student receive retroactive accommodations, meaning that, among other things, grades and academic assessments received when no accommodations were required to be provided will not be changed.” In several instances, Ms. Van Allen interceded on Ms. Scribner’s behalf to insure the provision of her accommodations, sometimes going so far as to ask professors to discount grades of quizzes taken



prior to receipt of the notification letter. This investigation believes that Ms. Van Allen's interventions were reasonable; however, her actions contradict the policy stated above, which appears to be inflexible, unreasonable, and punitive in nature. Had Ms. Scribner's accommodations been provided in a timely manner, Ms. Van Allen most likely would not have needed to intercede and request that grades be discounted.

## **2. Notetakers**

Ms. Scribner also alleges that UVM's note-taking process is cumbersome and causes delays in the provision of notes to students with disabilities. Currently, the policy requires the professor to identify a note-taker at the beginning of the semester. The note-taker leaves a copy of his/her notes at the OSSS where the student in need of note-taking services picks them up. Ms. Van Allen stated that it can take as much as a week for a note-taker to deliver their notes to the OSSS. Such a delay can harm a student who needs the notes in the interim to study for a quiz or exam. Moreover, this process also requires a trip to the OSSS to deliver or pick-up notes. In contrast, at Adirondack Community College, Ms. Scribner was able to purchase carbonless paper for her note-taker to use or to copy the notes at the library, enabling her to obtain copies of the class notes immediately or soon after class was over.

Ms. Scribner stated that she asked Ms. Van Allen if the policy could be changed so that she and her note-taker could copy class notes in a departmental office. Ms. Van Allen told Ms. Scribner that the policy could not be changed but that Ms. Scribner was welcome to try to make such arrangements on her own. Ms. Scribner succeeded in making such arrangements during her last semester at UVM. However, without changes in the UVM policies, Ms. Scribner and other students with disabilities are forced into a position of having to advocate for themselves in order to receive their accommodations in a timely fashion.

Because Vermont's Fair Housing and Public Accommodations is intended to be consistent with the Americans with Disabilities Act (ADA), 9 V.S.A. §4500, standards established under the ADA are applicable. In *Guckenberger, et al. v. Boston University*, the court stated that "[t]he ADA . . . forbid[s] both intentional discrimination against learning disabled student and 'methods of administration' that 'have the effect of discriminating on the basis of disability.'", 974 F.Supp.106 at 140. Policies are "methods of administration" and in this case, this investigation believes that the UVM policies "have the effect of discriminating on the basis of disability." This investigation does not believe that either of these policies – for the process for generating notification letters and for providing note-takers – effectively facilitates the provision of reasonable accommodations in a timely manner, and amounts to a violation of Vermont's Fair Housing and Public Accommodations Act.

***D. BSAD 146/147: Failure to provide reasonable accommodations***

Ms. Scribner alleges that Professor Kraushaar failed to provide her with reasonable accommodations in his intensive summer networking class in 1999. Ms. Scribner was aware and discussed with Ms. Van Allen the fact that she would not receive all of the accommodations in the course that she normally received.<sup>21</sup> However, she stated that before she enrolled in the course, Professor Kraushaar verbally agreed to give her extra time on quizzes and exams, and that this was the only accommodation she expected to receive. After the course started, Professor Kraushaar refused to provide this accommodation. Professor Kraushaar denied agreeing to provide extra time on quizzes and exams in the course. UVM contends that Ms. Scribner did not make "a formal request for accommodations" with the OSSS and therefore forfeited her right to receive accommodations.

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<sup>21</sup> Ms. Scribner understood that she would not receive any of her usual accommodations except extra time on quizzes and exams.

**i. Was allowing Ms. Scribner extra time on quizzes and exams in BSAD 146/147 a reasonable modification? Would it have resulted in a fundamental alteration in the course?**

Under Section 4502(c)(5) of the Fair Housing & Public Accommodations Act, universities such as UVM must make reasonable modifications in course procedures when such modifications are necessary to offer courses to students with disabilities, unless the university can demonstrate that making the modifications would fundamentally alter the nature of a course. As noted above, it is undisputed that Ms. Scribner has a learning disability for which she needs reasonable modifications in course procedures and requirements. Throughout Ms. Scribner's career at UVM, the university recognized Ms. Scribner's needs and provided her with a number of such modifications, including extra time on quizzes and exams. In doing so, the university presumably found that these modifications were reasonable and did not fundamentally alter the nature of the courses in which Ms. Scribner received the modifications.

UVM appears to have refused to allow Ms. Scribner extra time on quizzes and exams in only one course throughout her entire tenure at the university – BSAD 146/147, given by Professor Kraushaar in the summer of 1999. The issues to be determined are: 1) whether allowing Ms. Scribner extra time on quizzes and exams in BSAD 146/147 would have been a reasonable modification/accommodation or 2) whether such a modification/accommodation would have fundamentally altered the nature of that course. Each issue is considered separately below.

**ii. The interactive process: Was extra time on quizzes and exams a reasonable modification/accommodation for the summer course?**

Once a request for accommodations is made, the Department of Education Office of Civil Rights and courts have consistently held that a university is obligated to engage in an interactive process with a student in order to determine what reasonable modifications/accommodations are

necessary and appropriate. The courts have generally used analogous employment case analyses for making determinations in cases involving post-secondary educational institutions.

“In the employment context, courts have held that ‘[a]n employee’s request for reasonable accommodation requires a great deal of communication between employee and employer.’ Although a disabled employee must first make his limitations known, ‘the employer has at least some responsibility in determining the necessary accommodation’ by engaging in ‘an interactive process.’ ‘[A]n employer has a duty under the Act to gather sufficient information from the applicant and from qualified experts as needed to determine what accommodations are necessary to enable the applicant to perform his job safely.’ ‘The determination of a reasonable accommodation is a cooperative process in which both the employer and the employee must make reasonable efforts and exercise good faith.’” *Guckenberger, et al. v. Boston University*, 974 F.Supp.106 at 141, 142 (citations omitted)

The record shows that during the conversations Ms. Scribner had with the Professor Kraushaar, Ms. Woodman, and Ms. Van Allen in the spring of 1999, they discussed accommodations in some form or another for BSAD 146/147. Professor Kraushaar claims that he told Ms. Scribner that she could not have extra time on quizzes and exams because he needed time to prepare for class and extra time would interfere with the next scheduled activities in class. Ms. Scribner, on the other hand, claims that while she and Professor Kraushaar agreed that she could not have all of her “usual” accommodations for the summer class, he agreed to give her extra time on quizzes and exams as he had done during the previous semester. Regardless of whose version of this conversation is accepted, it was not Professor Kraushaar’s responsibility, nor did he have the expertise to determine what accommodations might or might not be reasonable. While professors can contest accommodations, suggest alternative accommodations, and even assist in the determination of accommodations, UVM policy clearly states that the learning disability specialist is responsible for initially determining what accommodations are reasonable, appropriate, and effective, and approving any alternatives suggested by a professor.

Ms. Scribner stated that when she spoke with Ms. Woodman about the summer course, Ms. Woodman told her "that the networking class would not be feasible giv[en] the time constraint." Ms. Woodman said that Ms. Scribner did not talk about her accommodation needs at the time but said that she told Ms. Scribner that she was concerned about Ms. Scribner taking the class because time extensions on quizzes and exams were not possible. Ms. Van Allen's notes also indicate that Ms. Woodman discussed concerns about Ms. Scribner's ability to handle the course because of her disabilities and that "extensions [weren't] really possible given the structure of the class." Clearly, Ms. Woodman was aware of Ms. Scribner's need for accommodations and, in essence, was denying Ms. Scribner's accommodations and the opportunity to take the course when she did not have the authority or expertise to determine what would constitute a reasonable accommodation for the summer.

Ms. Scribner also spoke with Ms. Van Allen in early April. They discussed the requirements for the course, how rigorous and intense the class was, and the time demands for the assignments. Ms. Van Allen said that she told Ms. Scribner that she probably would not be able to have time extensions on project assignments and quizzes and exams but did not say anything at the time about extra time for quizzes and exams. Ms. Scribner said that Ms. Van Allen told her she would not be able to receive all of her usual accommodations, such as time extensions on project assignments, but that extra time on quizzes and exams was reasonable. Ms. Van Allen said that they also discussed alternative courses and that she told Ms. Scribner to speak with Professor Kraushaar about what accommodations would be possible and that she would have to decide about taking the course without all of her usual accommodations. During this meeting, Ms. Scribner showed Ms. Van Allen the e-mail message from Professor Kraushaar with the course description and requirements.

Because it was Ms. Van Allen who was primarily responsible for determining reasonable accommodations, she should have discussed with Ms. Scribner what accommodations would be reasonable for the summer course. Instead, Ms. Van Allen told Ms. Scribner to ask Professor Kraushaar what accommodations would be possible thereby appearing to concede her entire responsibility to a professor unqualified to make decisions about what accommodations are necessary and reasonable. Ms. Van Allen had previously recommended to Ms. Woodman that Professor Kraushaar outline the course requirements (presumably so that Ms. Van Allen could make a determination about possible accommodations) and suggestions for course alternatives. However, Ms. Van Allen never followed up on this recommendation.

When Ms. Van Allen met with Ms. Scribner again in June they discussed the accommodations that Ms. Scribner would not be getting (extensions for project assignments and delays/postponements of quizzes or tests), but Ms. Van Allen never talked about what accommodations would be reasonable. It was not until July, after the course had started, that Ms. Van Allen acknowledges telling Ms. Scribner that extra time on quizzes and exams would be a reasonable accommodation for the course (Ms. Scribner contends that Ms. Van Allen told her during the spring semester that extra time on quizzes and exams was a reasonable accommodation for the summer class).

Professor Kraushaar suggested that Ms. Scribner look at courses at other academic institutions as an alternative to his summer course. Ms. Scribner did so but was told by Ms. Woodman that transferring credits from another college was not possible. Ms. Woodman also suggested alternative courses and options in lieu of Professor Kraushaar's summer course, but none had anything to do with computer networking. While offering alternative courses may be

appropriate as an alternative accommodation,<sup>22</sup> it does not relieve the university of its obligation to engage in the interactive process so as to determine whether a reasonable accommodations existed specifically for the summer computer networking class.

**iii. The deliberative process: Would the modification/accommodation fundamentally alter the nature of the summer course?**

Had UVM engaged in an adequate, timely interactive process, it could have determined in April 1999 whether extra time on quizzes and exams was a reasonable accommodation for the summer course. At that time, any objection by Professor Kraushaar to the recommended accommodation would have obligated the university to engage in a deliberative process to determine whether the requested accommodation would “fundamentally alter the nature” of the academic program.

“[In *Wynne v. Tufts University School of Medicine*], [t]he Court stressed that, while deference need be given to the institutional decision-makers in deciding whether an accommodation is possible, ‘there is a real obligation on the academic institution to seek suitable means of reasonably accommodating a handicapped person.’ Specifically, it found that ‘[i]f the institution submits undisputed facts demonstrating that the relevant officials within the institution considered alternative means, their feasibility, cost and effect on the academic program, and came to a rationally justifiable conclusion that the available alternative would result either in lowering academic standards or requiring substantial program alteration, the court could rule as a matter of law that the institution had met its duty of seeking reasonable accommodation.’” *Guckenberger, et al. v. Boston University*, 974 F.Supp.106 at 149

UVM does not contend that giving Ms. Scribner extra time on quizzes and exams would lower academic standards or require substantial program alteration. In fact, Ms. Van Allen eventually stated that extra time on quizzes and exams would be a reasonable accommodation for the summer course. In addition, as stated above, Professor Kraushaar offered several reasons

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<sup>22</sup> According to UVM policy, “[a]lternative accommodations must be as appropriate and effective as those recommended . . . [and] may not be implemented until they are approved by the Certifying Office.” The Certifying Office did not conduct an assessment about whether the alternative accommodations (taking a similar course at

why he could not provide the accommodation but the university made no effort to engage in a deliberative process in order to make a determination about the impact on academic standards or the nature of the program.

Professor Kraushaar has stated that he did not allow Ms. Scribner extra time on quizzes and exams in BSAD 146/147 because of the intensive nature of the course.<sup>23</sup> BSAD 146/147 covered a full semester's worth of material in only three weeks. The course met five days a week for three weeks with class running from 2:00 to 5:00 and computer lab running from 6:00 to 7:00 each day. Students took two quizzes each day – one at the beginning of class and another during the computer lab – and one exam each week.

Ms. Scribner stated that she was, in effect, allowed extra time on the lab quizzes because two teaching assistants stayed after lab was over to complete tasks, thus allowing her to have more time to finish the quizzes. However, she was not given extra time on the quizzes given at the beginning of classes each day.

Professor Kraushaar explained that he could not give Ms. Scribner an extra 15 minutes to complete these quizzes without holding up the rest of the class. Ms. Scribner contends that Professor Kraushaar could have accommodated her need for extra time on these quizzes by allowing her to start the quizzes 15 minutes before class began. Professor Kraushaar stated he could not do this because he created the quizzes shortly before the class met each day and because he needed this time to prepare for class. However, it would not appear to be unreasonable to ask Professor Kraushaar to prepare the quizzes a few minutes earlier. Nor would Professor Kraushaar have been required to sit with Ms. Scribner when she started the quizzes 15 minutes before class. Instead, he could have made arrangements for one of the course's teaching

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another institution or a different course at UVM) suggested by Professor Kraushaar and Dean Woodman were "appropriate and effective," nor did it approve such alternative accommodations.



assistants, or someone else, to give Ms. Scribner the quiz 15 minutes before class commenced, as he had done so in the previous semester's course with no difficulty. None of these options appear to have been explored.

Professor Kraushaar also stated that he started each class with a 5- to 10-minute question and answer session about the previous evening's reading assignment before giving the quiz. He stated that if Ms. Scribner began the quiz before class, she would have missed these pedagogically important sessions. Ms. Scribner denied that these sessions took place. In any event, in the interactive process, UVM and Ms. Scribner could have explored whether she may have been willing to miss these pre-quiz sessions if that was the only way she could get extra time on the quizzes. It is difficult to understand how missing these sessions would fundamentally alter the nature of the course for Ms. Scribner. Again, however, Professor Kraushaar appears not to have explored this option with either Ms. Scribner or Ms. Van Allen.

**iv. Did Ms. Scribner give UVM adequate notice that she was seeking extra time on quizzes and exams in BSAD 146/147?**

UVM argues that it was not obligated either to give Ms. Scribner extra time on quizzes or exams or to explore this option with her because she did not "formally request" [RP-8] this modification. While Ms. Scribner did not ask Ms. Van Allen for a notification letter, it is not disputed that she discussed the course and her accommodation needs with Professor Kraushaar, Ms. Woodman, and Ms. Van Allen. Moreover, the university was already on notice that Ms. Scribner had a disability that required accommodations and, in fact, Ms. Scribner had been given extra time to complete quizzes and exams in virtually all her other courses. In addition, Professor Kraushaar was aware of Ms. Scribner's needs because she had taken a course with him

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<sup>23</sup>The only modification Ms. Scribner sought in BSAD 146/147 was extra time on quizzes and exams.

the previous semester in which she received, among other things, extra time on quizzes and exams.

It is clear from the statements of Professor Kraushaar, Ms. Woodman, and Ms. Van Allen, that some discussion among themselves had taken place in March and April regarding the concerns Professor Kraushaar and Ms. Woodman had about Ms. Scribner's ability to handle the summer class given her disability and accommodation needs. Ms. Woodman recalled that in her conversation with Professor Kraushaar, he raised concerns about Ms. Scribner's ability to handle the course because of its intense nature and to make his point, he raised the issue of her alleged difficulties with deadlines during his spring semester course. Professor Kraushaar stated that at that time, he tried to explain to Ms. Woodman why he could not give Ms. Scribner extra time on quizzes and exams. Ms. Woodman, on the other hand, said they did not specifically discuss Ms. Scribner's need for extra time on quizzes and exams at that time. Ms. Van Allen's notes of April 8<sup>th</sup> indicate that Ms. Woodman again raised concerns about Ms. Scribner's ability to complete the course because of her disability. All of these conversations indicate that Professor Kraushaar and Ms. Woodman were aware of Ms. Scribner's possible need for accommodations for the summer course; they would have no other reason to discuss any "concerns" about Ms. Scribner as she was otherwise qualified and eligible to take the course.

Finally, Ms. Scribner took the initiative to speak with Professor Kraushaar, Ms. Woodman, and Ms. Van Allen about the summer course and her accommodation needs in March and April 1999. At that point, UVM was obligated to engage in the interactive process with Ms. Scribner to determine whether reasonable accommodations existed for the summer course.

v. **The notification letter**

UVM also contends that Ms. Scribner never followed the proper procedures for requesting accommodations for the summer course and was therefore herself responsible for failing to obtain these accommodations. On this issue of the notification letter, the record indicates both Ms. Scribner and the university contributed to the problems Ms. Scribner encountered.

During their June meeting, Ms. Van Allen asked Ms. Scribner if she needed a notification letter for the summer course and advised Ms. Scribner to ask Professor Kraushaar if he needed a notification letter. Ms. Scribner told Ms. Van Allen that she did not think a letter was necessary because Professor Kraushaar had agreed to give her extra time on quizzes and exams. Ms. Van Allen stated that she thought it was odd that Ms. Scribner did not want a letter and that she felt uncomfortable with the fact that the accommodation request was not in writing. Given that under UVM's policy, notification letters are mandatory in order for students to receive accommodations, it is odd that Ms. Van Allen told Ms. Scribner to ask Professor Kraushaar if he needed a notification letter, rather than simply generating a letter for Ms. Scribner at this time. It is also surprising that Ms. Van Allen did not warn Ms. Scribner of the consequences of not obtaining a notification letter.<sup>24</sup>

In light of UVM's experience with Ms. Scribner's accommodation needs over the previous two years and the discussions among Ms. Scribner, Ms. Van Allen, Ms. Woodman, and Professor Kraushaar about accommodating those needs for the summer course, the university

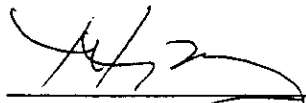
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<sup>24</sup> During her interview, when asked about whether students are informed about what happens if they do not get a notification letter, Ms. Van Allen said that Ms. Scribner would have learned about this in her "Conquering College" course. It appears that Ms. Van Allen did not think it was her responsibility to remind Ms. Scribner of the consequences of not obtaining a notification letter.

cannot justify its failure to give Ms. Scribner extra time on quizzes and exams in the course by pointing to Ms. Scribner's failure to request a notification letter.

**PRELIMINARY RECOMMENDATION:**

This investigative report recommends that the Human Rights Commission find that there are reasonable grounds to believe that UVM discriminated against Shirley Scribner because of her disability, in violation of 9 V.S.A. §4502 (c)(1) and (5).

  
\_\_\_\_\_  
Tracey Tsugawa  
Investigator

  
\_\_\_\_\_  
Harvey Golubock  
Executive Director

June 25, 2001  
Date

HUMAN RIGHTS COMMISSION

Shirley Scribner,  
Charging Party,

v.

University of Vermont,  
Respondent.

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Charge No.: PA00-0022

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following  
Order:

1 The following vote was taken on a motion to find that there are  
reasonable grounds to believe that University of Vermont, the Respondent discriminated against  
Shirley Scribner on the basis of disability, in violation of 9 V.S.A. §4502(c)(1) and (5) of the  
Vermont Fair Housing and Public Accommodations Act.

Erica Garfin, Chair For ☒ Against ☐ Absent ☐ Recused ☐

Willie Bowen For ☐ Against ☐ Absent ☒ Recused ☐

Ellen Burgess For ☒ Against ☐ Absent ☐ Recused ☐

Kevin Christie For ☒ Against ☐ Absent ☐ Recused ☐

Christine Hart For ☐ Against ☒ Absent ☐ Recused ☐

Entry: Reasonable grounds ☒ Motion failed ☐

2. Since the Human Rights Commission found that there are reasonable grounds to  
believe that University of Vermont, the Respondent discriminated against Shirley Scribner on the  
basis of disability, a final attempt to resolve Charge No.: PA00-0022 through settlement shall be  
completed by **February 15, 2002**.

Dated at Montpelier, Vermont this 15<sup>TH</sup> day of August, 2001.

HUMAN RIGHTS COMMISSION

BY:

Erica Garfin  
Erica Garfin, Chair

- absent -

Willie Bowen

Ellen Burgess  
Ellen Burgess

Kevin B. Christie  
Kevin Christie

Christine H. Hart  
Christine Hart